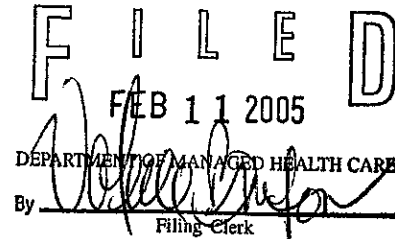


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8 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
9 IN AND FOR THE STATE OF CALIFORNIA

10 IN THE MATTER OF:

11 **VISION PLAN OF AMERICA**

12 Respondent.
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) Case No.:

) Enforcement Matter No.: 03-125

) **CEASE AND DESIST ORDER**

) (Health & Saf. Code §1391)
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17 **TO: VISION PLAN OF AMERICA**
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19 The Director of the Department of Managed Health Care (hereinafter "DMHC"), by
20 and through her designee, Assistant Deputy Director Amy L. Dobberteen, after examination
21 and investigation, determines as follows:

22 **I.**

23 **INTRODUCTORY STATEMENT**

24 1. Vision Plan of America (hereinafter "VPA"), with its principle place of
25 business located at 3255 Wilshire Blvd., Suite 1610, Los Angeles, CA 90010, is a
26 specialized health care service plan, licensed by the California Department of Managed
27 Health Care (hereinafter "DMHC") since January 30, 1987 (File No. 933-0268). As such,
28 VPA is subject to the provisions of the Knox-Keene Health Care Service Plan Act of 1975

1 (hereinafter "KKA"), as found in Chapter 2.2, Division 2, of the Health and Safety Code, as
2 well as the promulgated regulations, as found in Division 1, Chapter 1 of Title 28 of the
3 California Code of Regulations.

4 2. In its creation of the KKA, it was the intent and purpose of the Legislature to
5 promote the delivery and the quality of health care to the people of the State of California
6 who enroll in, or subscribe for the services rendered by a specialized health care service plan
7 by ensuring that subscribers and enrollees are educated and informed of the benefits and
8 services available in order to enable a rational consumer choice in the marketplace and to
9 prosecute malefactors who make fraudulent solicitations or who use deceptive methods,
10 misrepresentations, or practices, which are inimical to the general purpose of enabling a
11 rational choice for the consumer public. (Health & Saf. Code §1342 (b) and (c))

12 II.

13 STATUTORY AUTHORITY

14 3. Subdivision (a)(1), of section 1391 of the Health and Safety Code provides that
15 the Director of the DMHC may issue an order directing a specialized health care service plan
16 to cease and desist from engaging in any act or practice in violation of the provisions of the
17 KKA or any rule adopted pursuant to the KKA.

18 4. Health and Safety Code section 1360, subdivision (a) provides that specialized
19 health care service plans may not use or permit the use of any advertising or solicitation
20 which is untrue or misleading, or any form or evidence of coverage which is deceptive.

21 5. For purposes of Health and Safety Code section 1360, subdivision (a), a
22 written or printed statement or item of information is deemed untrue if it
23 does not conform to fact in any respect which is, or may be significant
24 to an enrollee or subscriber, or potential enrollee or subscriber in a plan.
25 (Health & Saf. Code §1360 (a)(1))

26 6. For purposes of Health and Safety Code section 1360, subdivision (a), a
27 written or printed statement or item of information shall be deemed misleading whether or
28 not it may be literally true if in the total context in which the statement is made or such item

1 of information is communicated, such statement or item of information may be understood
2 by a person not possessing special knowledge regarding health care coverage, as indicating
3 any benefit or advantage, or absence of any exclusion, limitation, or disadvantage of possible
4 significance to an enrollee, or potential enrollee or subscriber, in a plan, and such is not the
5 case. (Health & Saf. Code §1360 (a)(2).

6 7. For purposes of Health and Safety Code section 1360, subdivision (a), an
7 evidence of coverage shall be deemed to be deceptive if the evidence of coverage taken as a
8 whole and with consideration given to typography and format, as well as language, shall be
9 such as to cause a reasonable person, not possessing special knowledge of plans, and
10 evidence of coverage therefore to expect benefits, service charges, or other advantages which
11 the evidence of coverage does not provide or which the plan issuing such coverage or
12 evidence of coverage does not regularly make available to enrollees or subscribers covered
13 under such evidence of coverage. (Health & Saf. Code §1360 (a)(3))

14 8. Health and Safety Code section 1363, subdivision (a) requires that specialized
15 health care service plans use disclosure forms or material containing information regarding
16 the benefits, services, and terms of the plan contract, so as to afford the public, subscribers,
17 and enrollees with a full and fair disclosure of the provisions of the plan in readily
18 understood language and in a clearly organized manner.

19 9. Rule 1300.63, subdivisions (a)(1), (2), and (4) of Title 28 of the California
20 Code of Regulations (hereinafter "CCR") provides that the disclosure form required under
21 subdivision (a) of Section 1363 of the KKA shall conform to text printed in at least 10-point
22 block type, with titles and captions in at least 12-point to 15 point bold face type, written in
23 clear, concise, easily understood language, presented in an easily readable format.

24 10. Rule 1300.63, subdivision (c)(3) of Title 28 of the CCR requires combined
25 evidence of coverage and disclosure forms to contain definitions of words contained therein
26 that have meanings other than those attributed to them by the public in general usage.

27 11. Rule 1300.63.1 confirms Rule 1300.63 of Title 28 of the CCR stating that an
28 evidence of coverage shall conform to the requirements of subdivision (a) of Rule 1300.63

1 and suggests that the evidence of coverage when taken as a whole, with consideration being
2 given to format, typography, and language, must constitute a fair disclosure of the provisions
3 of the health plan.

4 12. Moreover, Rule 1300.63.2, subdivisions (b)(3), (5), and (6) of Title 28 of the
5 CCR requires that a combined evidence of coverage and disclosure form must be printed in
6 at least 10-point block type, titles and captions to be in at least 12-point to 15-point boldface
7 type. The combined document must be written in clear, concise, easily understood language,
8 presented in an easily readable format, and when taken as a whole, with consideration being
9 given to format, typography and language, must constitute a fair disclosure of the provisions
10 of the health plan.

11 13. The disclosure form required by Health and Safety Code section 1363,
12 subdivision (a) is required to contain, in concise and specific terms, a statement as to when
13 benefits shall cease in the event of nonpayment of the prepaid or periodic charge, without
14 any regard for the method of collection of unpaid prepaid or periodic charges. (See Health &
15 Saf. Code §1363 (a)(7))

16 14. Health and Safety Code section 1363.1 requires all specialized health care
17 service plan contracts that include terms that require binding arbitration to settle disputes and
18 that restrict or provide for a waiver of the right to a jury trial to provide, in clear and
19 understandable language, a disclosure that appears as a separate article in the agreement
20 issued to the employer group or individual subscriber. Section 1363.1 also requires that such
21 disclosure be prominently displayed: 1) immediately before the signature line provided for
22 the representative of a group contracting with the specialized health care service plan, and 2)
23 immediately before the signature line of all enrollment forms for individuals enrolling in the
24 specialized health care service plan.

25 15. Health and Safety Code section 1367, subdivision (h)(1) provides that
26 contracts with subscribers and enrollees, including group contracts, shall be fair, reasonable,
27 and consistent with the objective of the KKA.

28 16. Rule 1300.67.4, subdivision (a) of Title 28 of the CCR requires all subscriber

1 and group contracts and endorsements and amendments to be printed legibly in not less than
2 8-point type.

3 17. Health and Safety Code section 1386, subdivision (b)(7) provides that a
4 specialized health care service plan that has engaged in any conduct that constitutes fraud or
5 dishonest dealing or unfair competition, as defined by section 17200 of the Business and
6 Professions Code, is grounds for disciplinary action by the Director of the DMHC.

7 18. Pursuant to Health and Safety Code section 1395, subdivision (g), no
8 representative of a vision plan shall in any manner use false or misleading claims to
9 misrepresent itself while engaging in application assistance activities.

10 III.

11 VIOLATIONS OF THE LAW

12 19. VPA engages in unlawful, unfair or fraudulent business acts or practice, and
13 unfair, deceptive, untrue or misleading advertising and soliciting of its vision care service
14 plans. VPA gains enrollees through employer group solicitation, advertising and marketing.
15 An employer enters into a vision care service plan contract with VPA. This contract contains
16 obscure provisions that hold employee enrollees individually and personally responsible and
17 liable for premium payments if either the employer group terminates the vision care service
18 plan contract before the end of the contract term or the employee enrollee is no longer
19 eligible for group coverage. The financial obligation of the enrollee is not properly disclosed
20 through VPA's employer group solicitation or advertising, to either the employer group or
21 the individual enrollee prior to contracting with VPA. Yet, VPA aggressively seeks
22 reimbursement from individual enrollees for all unpaid premiums in the event their employer
23 terminates their contract or an enrollee is no longer eligible for group coverage.

24 20. The acts described in paragraph 19 above, violate Health and Safety Code
25 section 1367, subdivision (h)(1) since VPA engages in unfair and unreasonable contracting
26 with employer groups.

27 21. The acts described in paragraph 19 above, violate Health and Safety Code
28 section 1360, subdivisions (a)(1) and (2) as VPA engages in untrue and misleading employer

1 group advertising and solicitation of its vision care services.

2 22. The acts described in paragraph 19 above, violate Health and Safety Code
3 section 1395, subdivision (g) because VPA's plan representatives use false and misleading
4 claims to misrepresent itself, making individual enrollees believe they are eligible for and
5 enrolling in employer group vision care benefits.

6 23. The acts described in paragraph 19 above, demonstrate that VPA engages in
7 conduct that constitutes fraud or dishonest dealing or unfair competition as defined by
8 Business and Professions Code section 17200, subjecting VPA to disciplinary action
9 pursuant to Health and Safety Code section 1386, subdivision (b)(7).

10 24. VPA's Group Evidence of Coverage, Disclosure Form, and vision care service
11 plan contract are combined into one document. This document fails to be clear and concise
12 or easily readable and fails to provide full and fair disclosure for all of the following reasons:

- 13 a) the document contains several references that directly hold individual
14 enrollees personally responsible and liable for premiums, despite the lack
15 of a direct contractual relationship with those enrollees;
- 16 b) the document identifies group coverage as that gained through dutiful
17 active full-time employment, yet requires enrollees to carry membership
18 responsibilities in an individual coverage capacity even after their
19 employment eligibility ends;
- 20 c) the document contains inconsistent provisions as it suggests members who
21 lose coverage can apply for individual coverage when, in fact, VPA forces
22 enrollees who lose group eligibility into individual contracts without their
23 direct knowledge or consent. VPA then requires them to pay upon demand,
24 all of the remaining premiums for the remainder of the contract period in
25 one lump sum. VPA threatens to send these enrollees to collections, and, in
26 fact, sends them to collections if they do not pay the amounts allegedly
27 owed;
- 28 d) to the extent an enrollee wishes to dispute the amounts allegedly owed, the

document does not contain proper disclosure of the remedies available to enrollees via arbitration in that such disclosure is not prominently displayed on the enrollment form signed by each individual enrollee, nor is it disclosed immediately before the signature line of the vision care service plan contract signed by the enrollee's employer.

25. VPA has financially benefited from the unlawful practices described above in unknown sums, all of which should be reimbursed to the enrollees who, at all times, believed they were covered under an employer group vision care service plan contract and not an individual service plan contract.

26. The acts described in paragraph 24 above, violate Health and Safety Code section 1363, subdivision (a)(7) in that the disclosure form, as combined in the sole document described herein, must state that benefits will cease if payment of the premiums are not received without any reference to VPA having the right to collect premiums from third party beneficiaries of its vision care service plan contracts.

27. The acts described in paragraph 24 above, violate Health and Safety Code section 1363.1, subdivisions (b) and (d), in that the binding arbitration provision in the combined sole document described herein is neither prominently displayed on the enrollment forms signed by each individual enrollee, nor is it prominently displayed immediately before the signature line of the vision care service plan contracts executed by the employer groups.

28. VPA's Evidence of Coverage, as combined in the sole document, is deceptive in that it is attached to the vision care service plan contract and the group application and agreement form. In this combined capacity, it contains terms and conditions holding individual enrollees personally responsible and liable for premiums in the event they lose group eligibility status, yet does not provide an opportunity for these enrollees to review these terms and conditions prior to their employer group entering into the contractual relationship with VPA. In fact, most, if not all, enrollees never see a copy of the Evidence of Coverage, in this combined capacity, or any capacity for that matter. Further, there is no individual application and agreement form, only one for the employer group, yet VPA holds

1 the individual enrollees to the contractual terms and conditions agreed to by their employer
2 group. In essence, the enrollees are third party beneficiaries of the contractual relationship
3 between VPA and the employer group, and as such cannot be held responsible for any breach
4 or obligation between the contractual parties.

5 29. The acts described in paragraph 28 above, violate Health and Safety Code
6 section 1363, subdivision (a), Rule 1300.63, subdivisions (a)(2) and (4), Rule 1300.63.1,
7 subdivision (b)(4), and Rule 1300.63.2, subdivisions (b)(3), (5), and (6) of Title 28 of the
8 CCR because VPA's combined Evidence of Coverage and Disclosure Form fail to provide
9 full and fair disclosure of its terms and conditions. In addition the Evidence of Coverage and
10 Disclosure Form, as combined, are not easily readable and are not concise or specific as to
11 their terms and conditions.

12 30. The acts described in paragraph 28 above, violate Health and Safety Code
13 section 1360, subdivision (a)(3), since VPA engages in a deceptive use of its Evidence of
14 Coverage.

15 31. The Evidence of Coverage, Disclosure Form, and vision care service plan
16 contract are combined into one document and this document is deficient in that it contains
17 several sections that do not appear to be formatted in the proper font, as required by the laws
18 set forth below, and the document fails to define material terms as set forth therein, i.e.,
19 "medically necessary" and "voluntary participants."

20 32. The acts described in paragraph 31 above, violate Rules 1300.63, subdivision
21 (a)(1) and 1300.67.4, subdivision (a) of Title 28 of the CCR as VPA's Evidence of
22 Coverage, Disclosure Form, and plan contracts contain the improper font.

23 33. The acts described in paragraph 31 above, violate Rule 1300.63, subdivision
24 (c)(3) of Title 28 of the CCR because VPA's Evidence of Coverage and Disclosure Form, as
25 combined, fail to include the definitions of words contained therein that have meanings other
26 than those attributed to them by the public in general usage.

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IV.

CEASE AND DESIST ORDER

WHEREFORE, the Director of the DMHC finds that VPA has violated all of the Health and Safety Code sections, as well as their corresponding Rules, as set forth above. By virtue of all of the powers given to the Director, as enumerated in the KKA, and specifically authorized by Health and Safety Code section 1344, subdivision (a):

IT IS HEREBY ORDERED THAT:

1. VPA must immediately cease and desist from the practice of holding enrollees personally liable for premium payments if the enrollees' employer group vision care service plan contract is terminated before the end of the contract term or the enrollee is no longer eligible for group coverage;

2. VPA must immediately cease and desist from using or relying upon, in any manner, the combined Evidence of Coverage, Disclosure Form, and vision care service plan contract, described herein, or any other document that contains any provision holding enrollees personally liable for premium payments if the enrollees' employer group vision care service plan contract is terminated before the end of the contract term or the enrollee is no longer eligible for group coverage;

3. VPA must revise all evidences of coverage, disclosure forms, vision care service plan contracts, group applications and agreement forms, individual enrollment forms, and any and all advertisements, marketing and solicitation materials or any other document that sets forth any language that holds employer group enrollees personally responsible and liable for premium payments, as described herein, within ninety (90) days;

4. Once revised, VPA must immediately file the documents outlined in paragraph 3 above, within the timeframe set forth in paragraph 3, with the DMHC as material modifications pursuant to Health and Safety Code section 1352, subdivision (b), and Rules 1300.52.1 and 1300.52.4, subdivisions (a) and (d), of Title 28 of the CCR. Once filed, the DMHC will review these documents for compliance with all of the deficiencies identified in this order and any other deficiency identified at the time of the review;

1 5. VPA must identify all individual enrollees and their last known address from
2 1995 to the present, where VPA collected premiums directly from the enrollee because either
3 their employer group vision care service plan contract was terminated before the end of the
4 contract term or the enrollee was no longer eligible for group coverage. VPA must forward
5 that information to the DMHC's Office of Enforcement within sixty (60) days. This
6 information must be accompanied by the attached Verification Statement Accompanying
7 Records, verifying and declaring under penalty of perjury and pursuant to the laws of the
8 State of California that the foregoing attached information is true and correct, and if called
9 upon to testify, the Custodian of Records could and would competently testify thereto; and

10 6. Within sixty (60) days after compliance with paragraph 5 above, VPA must contact
11 each individual enrollee identified at their last known address and notify them of the
12 opportunity for reimbursement of the full sums received from that enrollee, as ordered by the
13 DMHC. VPA must include a telephone number for eligible enrollees to contact VPA to gain
14 information on how they may collect such reimbursement. In the event, after proper notice
15 thereto, VPA cannot obtain contact with the enrollee within forty-five (45) days after mailing
16 of the notice, then those uncollected sums, are to be deposited into the DMHC's Managed
17 Care Fund, as an administrative penalty imposed on VPA for its acts and omissions resulting
18 in all of the violations set forth herein.

19 **THIS ORDER SHALL TAKE EFFECT IMMEDIATELY AND SHALL**
20 **CONTINUE IN FULL FORCE UNLESS AND UNTIL IT IS MODIFIED, AMENDED,**
21 **AND/OR VACATED BY FURTHER ORDER OF THE DIRECTOR.**

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23 Dated: February 11, 2005

DEPARTMENT OF MANAGED
HEALTH CARE

24
25 By: 
26

AMAL A. ABU-RAHMA
Staff Counsel
Office of Enforcement
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